

1 CHAIRPERSON JAMES: Ms. Coleman.

2 MS. COLEMAN: Thank you. I'm Penny Coleman, Deputy
3 General Counsel of the National Indian Gaming Commission. You're
4 going to have to forgive me, I'm having a little trouble with
5 these old lady glasses. I have trouble seeing up there and
6 looking down here at the same time.

7 Thank you for inviting me to speak before the
8 Commission. With me is Commissioner Phil Hogan. Mr. Hogan is
9 Ogalala Sioux. He's a former U.S. Attorney from South Dakota and
10 former tribal attorney for the Ogalala Sioux. He can also
11 address any questions that you may have for the National Indian
12 Gaming Commission.

13 I'm here to discuss current state of affairs with
14 respect to Indian gaming. As you will remember, IGRA, Indian
15 Gaming Regulatory Act, establishes three classes of gaming and
16 three classes -- the three classes are important because Class I
17 gaming is traditional of social gaming. Tribes are the only ones
18 responsible for regulating that. Class II gaming is the high
19 stakes bingo, the non-banking games, card games, like poker. The
20 National Gaming Commission and the tribes are responsible for
21 regulating that kind of gaming.

22 Class III gaming is the more traditional casino type
23 gaming and that's important to know because that kind of gaming
24 is regulated by the tribes. It's regulated by the NIGC and it is
25 regulated pursuant to state and tribal compacts.

26 The tribes generally serve as the primary regulators
27 for gaming. They're the ones that are on the ground, they're the
28 ones that are there 24 hours a day. On occasion states are there

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1 24 hours a day, too, if the tribal/state compact provides for it
2 but by and large it is the tribes who are the ones who are doing
3 the primary regulating of Indian gaming.

4 I've visited -- during the course of my work, I've
5 worked in Indian gaming for the Federal Government for seven
6 years. I've visited lots of Indian and non-Indian gaming
7 facilities. One of the things I've discovered much to my
8 pleasure is that the -- many of the Indian gaming facilities have
9 taken the best of the non-Indian -- of the non-Indian regulations
10 and have implemented themselves. One of the things you'll
11 probably see at Gila River tomorrow is if you'll go through the
12 surveillance and you'll look at the surveillance, ask them how
13 many cameras they have, how many of those cameras are being taped
14 every day. It will amaze you how many are being taped.

15 Yet I've gone to non-Indian facilities where they've
16 had much bigger facilities, half as many cameras or a third as
17 many cameras and maybe only 10 or 20 of those cameras are
18 actually being taped. It's quite amazing. Now, I don't say that
19 that's happening throughout Indian country but clearly there are
20 many Indian facilities that have really gone to great lengths to
21 make sure that their facilities are regulated by them to a great
22 degree.

23 The NIGC has, because it is not the primary
24 regulator, because there are 285 gaming operations and 188 tribes
25 in 28 states, we've had to focus more on an oversight role. We
26 try to do more education, technical assistance, compliance. We
27 do a lot of enforcement and formal enforcement action but we try
28 to get compliance first and we do that by -- we do that over both

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1 Class II and III. We have broad enforcement authorities. We can
2 issue notices of violation. We can issue closure orders and we
3 can issue civil fines of \$25,000.00 per day per violation.

4 If you happen to have our chart in front of you which
5 shows a representative activities by class of operation you'll
6 see that NIGC's role is not limited to Class II. It is often
7 more intensively in Class III. Because there are 285 gaming
8 operations with approved 275 ordinances, we've made, over the
9 course of the few years we've been in existence 1100 site visits.
10 We have imposed 71 civil fines. We've closed 29 facilities.
11 We've taken 82 enforcement actions and most of those have either
12 been in a Class III facility or in a combined Class II and Class
13 III facility.

14 For both Class II and III we are responsible for
15 approving tribal ordinances, management contracts, reviewing
16 annual audits, for assuring that gaming is conducted in a manner
17 which protects the environment and health and public safety, for
18 assuring that background systems are adequate, that contracts are
19 audited, that -- assuring that tribes have the sole proprietary
20 interest in the gaming, that per capita payments are made to
21 tribal members only as allowed under IGRA and for Class III for
22 determining specifically whether the Class III gaming is
23 conducted pursuant to a tribal/state gaming compact.

24 We not only provide the large group training, do the
25 individual site visits, we issue bulletins, we issue warning
26 letters. We're often called to intervene when there are
27 disagreements within the tribe or within the tribe and the state.
28 One of the things that we are doing that is directly relevant to

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1 something that Mr. Di Gregory said, which is minimum standards,
2 is that we are about to within a week, we are going to be
3 publishing proposed minimum internal control standards, and we're
4 doing that because we believe we have the authority to do so
5 obviously, but also because we perceived a need to have those
6 kind of minimum standards and the kinds of things they are going
7 to address are really basic standards intended to assure that
8 money goes where it's supposed to go.

9 For instance, how many people to you have standing at
10 the machine when you open it up? You know, where does the drop
11 box go? Who is standing in the count room when they do a count?
12 It's all of those very specific requirements. We're doing it on
13 a three tier basis depending on the gross revenue of the tribes,
14 the size of the operation essentially and we think that that's
15 going to help a lot.

16 Now there are tribal facilities that already meet
17 these standards, there's no doubt in my mind. Clearly the
18 advisory committee we have which are tribal regulators, their
19 tribes already meet the requirements. They're sitting there
20 saying, "Yes, put that in, put that in. Make sure we want to
21 have it as tight as we can be". And for broad overall standards,
22 they are quite -- they're going to be sufficiently stringent that
23 I think we're going to be very happy with how the tribes are
24 going to regulate their facilities.

25 Our enforcement division has had a significant
26 expansion of its activities. We started out primarily interested
27 in reviewing management contracts, getting the Commission, the
28 tribal gaming commissions going, getting our own commission

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1 going. Since then we have gotten into more enforcement. During
2 '96/'97 we initiated 56 enforcement actions. They have -- we
3 have addressed a wide range of regulatory violations, operating
4 without approved tribal gaming ordinance, failing to submit fees,
5 operating Class III gaming without an approved compact. We've
6 closed a facility because it wasn't conducting its audits and
7 background investigations. We have two actions pending
8 against contractors for managing without approved management
9 contracts. These actions have resulted in one that has a \$1
10 million fine and one that has an \$8.5 million fine. So these
11 \$25,000.00 per day per violation can get up to pretty high fines
12 fairly quickly. In '97 we began to publish a compliance report
13 which is also -- the most recent one is included in your packet.
14 We were doing them quarterly and we're now doing them half-
15 yearly.

16 That report reflects continued improvement in the
17 compliance records of the tribes. They have gotten continually
18 better in those items that we were tracking in that compliance
19 report. IGRA does have some gaps. They're not unlike other
20 acts, it has its problems and an important concern that we have
21 is the gaps in the regulatory authorities. We, the NIGC, approve
22 management contracts. Those management contracts are subject to
23 very strict requirement and strict backgrounding and we have seen
24 as a result of a variety of tribes who have -- not tribes, excuse
25 me, contractors who have tried to get around those background
26 checks by claiming that they are consultants, by claiming they're
27 lenders, claiming they're anything but management contracts. So
28 we've taken a real broad view of what a management contractor is

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1 and we do bring actions against people who or entities that --
2 who conduct gaming without an approved management contract.

3 But those cases are very difficult to prove. They're
4 hard to prove and we have looked to extending our authority
5 beyond just approved management contracts.

6 Another problem that the tribes have expressed to us
7 many times is their inability to do background investigations on
8 all of the contractors they deal with. They do FBI checks
9 through us for their key employees and their management
10 contractors but they cannot do those through the FBI for vendors,
11 suppliers or consultants. Now in some states some states have
12 taken up that area and they process fingerprints and criminal
13 checks but that isn't always the case and so there are times
14 where the tribes are not able to do the kind of backgrounding
15 that they want to do on all of their contractors.

16 There is another problem that we've run into which is
17 overlapping responsibilities on classification of games. Mr.
18 Husk's testimony will refer to such an inconsistency between the
19 State of Arizona and the NIGC's view on poker in the state.
20 Chairman Johnson has Fed Ex'd a supplement to my testimony that
21 discusses that and it should arrive to you today. And I would
22 just like to briefly summarize his testimony.

23 "Mr. Husk alleges that the NIGC has demonstrated a
24 greater preference towards promoting Indian gaming rather than
25 regulating Indian gaming". Chairman Johnson wants you to know
26 that this statement is both inaccurate and reckless. We have
27 greatly expanded our enforcement. There is simply a legal
28 difference of opinion between Mr. Husk and the NIGC and we

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1 believe that our interpretation is the correct interpretation.
2 We are interpreting federal law. Federal law says that Class II
3 card games are those that are non-banking. They're either
4 explicitly authorized or not explicitly prohibited and played at
5 the same location -- played at any location in the state.

6 Poker is not explicitly authorized but neither is it
7 explicitly prohibited and it is played at locations throughout
8 the state. Therefore, it does constitute a Class II game subject
9 to the NIGC enforcement and we believe that that is a correct
10 interpretation of the law. This is -- basically was for us a
11 softball.

12 And furthermore, it is inaccurate for Mr. Husk to
13 contend that the NIGC inserted itself into the situation. The
14 State of Arizona requested NIGC's opinion. The tribes requested
15 our opinion. We looked at both the tribes' views and the state
16 views. Furthermore there was consultation with the state on this
17 matter. Chairman Johnson and the rest of the Commission had a
18 tele-conference with the attorney general of the state and Mr.
19 Husk and did discuss this before we issued an opinion.

20 As you can see, we're faced with a number of
21 challenges. In the four years I've worked with the NIGC I've
22 seen it rise to the challenges and I think we're doing a better
23 job each and every year. We welcome and encourage your support
24 for our efforts. We greatly appreciate your inviting us to speak
25 to you today.

26 CHAIRPERSON JAMES: Thank you. For the benefit of
27 the public, I do note that according to the timing, we should be
28 getting ready to go into a public comment period right now.

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- 1 Without objection, I'd like to continue with this panel and then
- 2 pick up the public comment period immediately after that.

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